

16-10a-102. Definitions.

As used in this chapter:

(1) (a) "Address" means a location where mail can be delivered by the United States Postal Service.

(b) "Address" includes:

- (i) a post office box number;
- (ii) a rural free delivery route number; and
- (iii) a street name and number.

(2) "Affiliate" means a person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, the person specified.

(3) "Assumed corporate name" means a name assumed for use in this state by a foreign corporation pursuant to Section 16-10a-1506 because its corporate name is not available for use in this state.

(4) "Articles of incorporation" include:

- (a) amended and restated articles of incorporation;
- (b) articles of merger; and
- (c) a document of a similar import to those described in Subsections (4)(a) and

(b).

(5) "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.

(6) "Bylaws" includes amended bylaws and restated bylaws.

(7) "Cash" and "money" are used interchangeably in this chapter and mean:

- (a) legal tender;
- (b) a negotiable instrument; and
- (c) a cash equivalent readily convertible into legal tender.

(8) "Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed it, including printing or typing in:

- (a) italics;
- (b) boldface;
- (c) contrasting color;
- (d) capitals; or
- (e) underlining.

(9) "Control" or a "controlling interest" means the direct or indirect possession of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting shares, by contract, or otherwise.

(10) "Corporate name" means:

- (a) the name of a domestic corporation or a domestic nonprofit corporation as stated in its articles of incorporation; or
- (b) the name of a foreign corporation or a foreign nonprofit corporation as stated in its articles of incorporation or document of similar import.

(11) "Corporation" or "domestic corporation" means a corporation for profit that:

- (a) is not a foreign corporation; and
- (b) is incorporated under or subject to this chapter.

(12) "Deliver" includes delivery by mail or another means of transmission authorized by Section 16-10a-103, except that delivery to the division means actual

receipt by the division.

(13) (a) "Distribution" means the following by a corporation to or for the benefit of its shareholders in respect of any of the corporation's shares:

(i) a direct or indirect transfer of money or other property, other than a corporation's own shares; or

(ii) incurrence of indebtedness by the corporation.

(b) A distribution may be in the form of:

(i) a declaration or payment of a dividend;

(ii) a purchase, redemption, or other acquisition of shares;

(iii) distribution of indebtedness; or

(iv) another form.

(14) "Division" means the Division of Corporations and Commercial Code.

(15) "Effective date," when referring to a document filed by the division, means the time and date determined in accordance with Section 16-10a-123.

(16) "Effective date of notice" means the date notice is effective as provided in Section 16-10a-103.

(17) "Electronic transmission" or "electronically transmitted" means a process of communication not directly involving the physical transfer of paper that is suitable for the receipt, retention, retrieval, and reproduction of information by the recipient, whether by e-mail, facsimile, or otherwise.

(18) "Employee" includes an officer but not a director, unless the director accepts a duty that makes that director also an employee.

(19) "Entity" includes:

(a) a domestic and foreign corporation;

(b) a nonprofit corporation;

(c) a limited liability company;

(d) a profit or nonprofit unincorporated association;

(e) a business trust;

(f) an estate;

(g) a partnership;

(h) a trust;

(i) two or more persons having a joint or common economic interest;

(j) a state;

(k) the United States; and

(l) a foreign government.

(20) "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this state.

(21) "Governmental subdivision" means:

(a) county;

(b) municipality; or

(c) another type of governmental subdivision authorized by the laws of this state.

(22) "Individual" means:

(a) a natural person;

(b) the estate of an incompetent individual; or

(c) the estate of a deceased individual.

(23) "Mail," "mailed," or "mailing" means deposit, deposited, or depositing in the

United States mail, properly addressed, first class postage prepaid, and includes registered or certified mail for which the proper fee is paid.

(24) "Notice" is as provided in Section 16-10a-103.

(25) "Principal office" means the office, in or out of this state, designated by a domestic or foreign corporation as its principal office in the most recent document on file with the division providing the information, including:

- (a) an annual report;
- (b) an application for a certificate of authority; or
- (c) a notice of change of principal office.

(26) "Proceeding" includes:

- (a) a civil suit;
- (b) arbitration or mediation; and
- (c) a criminal, administrative, or investigatory action.

(27) "Qualified shares" means, with respect to a director's conflicting interest transaction pursuant to Section 16-10a-853, one or more shares entitled to vote on the transaction, except a share:

(a) that, to the knowledge, before the vote, of the secretary, other officer, or agent of the corporation authorized to tabulate votes, is beneficially owned; or

(b) the voting of which is controlled, by:

- (i) a director who has a conflicting interest respecting the transaction;
- (ii) a related person of that director; or
- (iii) a person referred to in Subsections (27)(b)(i) and (ii).

(28) "Receive," when used in reference to receipt of a writing or other document by a domestic or foreign corporation, means the writing or other document is actually received by:

(a) the corporation at its:

- (i) registered office in this state; or
- (ii) principal office;

(b) the secretary of the corporation, wherever the secretary is found; or

(c) another person authorized by the bylaws or the board of directors to receive the writing or other document, wherever that person is found.

(29) (a) "Record date" means the date established under Part 6, Shares and Distributions, or Part 7, Shareholders, on which a corporation determines the identity of its shareholders.

(b) The determination under Subsection (29)(a) shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

(30) "Registered office" means the office within this state designated by a domestic or foreign corporation as its registered office in the most recent document on file with the division providing that information, including:

- (a) articles of incorporation;
- (b) an application for a certificate of authority; or
- (c) a notice of change of registered office.

(31) "Related person" of a director means:

- (a) the spouse of the director;
- (b) a child, grandchild, sibling, or parent of the director;

- (c) the spouse of a child, grandchild, sibling, or parent of the director;
- (d) an individual having the same home as the director;
- (e) a trust or estate of which the director or any other individual specified in this Subsection (31) is a substantial beneficiary; or
- (f) a trust, estate, incompetent, conservatee, or minor of which the director is a fiduciary.

(32) "Secretary" means the corporate officer to whom the bylaws or the board of directors delegates responsibility under Subsection 16-10a-830(3) for:

- (a) the preparation and maintenance of:
 - (i) minutes of the meetings of the board of directors and of the shareholders;

and

- (ii) the other records and information required to be kept by the corporation by Section 16-10a-830; and

- (b) authenticating records of the corporation.

(33) "Share" means the unit into which the proprietary interests in a corporation are divided.

(34) (a) "Shareholder" means:

- (i) the person in whose name a share is registered in the records of a corporation; or
- (ii) the beneficial owner of a share to the extent recognized pursuant to Section 16-10a-723.

- (b) For purposes of this chapter:

- (i) the following, identified as a shareholder in a corporation's current record of shareholders, constitute one shareholder:

- (A) (I) three or fewer coowners; or
 - (II) in the case of more than three coowners, each coowner in excess of the first three is counted as a separate shareholder;

- (B) a corporation, limited liability company, partnership, trust, estate, or other entity; and

- (C) the trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account;

- (ii) shareholdings registered in substantially similar names constitute one shareholder if it is reasonable to believe that the names represent the same person; and

- (iii) if the record of a shareholder is not maintained in accordance with accepted practice, an additional person who would be identified as an owner on that record if it had been maintained in accordance with accepted practice shall be included as a holder of record.

(35) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

(36) "Tribe" means a tribe, band, nation, pueblo, or other organized group or community of Indians, including an Alaska Native village, that is legally recognized as eligible for and is consistent with a special program, service, or entitlement provided by the United States to Indians because of their status as Indians.

(37) "Tribal corporation" means a corporation:

- (a) incorporated under the law of a tribe; and

(b) that is at least 51% owned or controlled by the tribe.

(38) (a) "Voting group" means all shares of one or more classes or series that under the articles of incorporation or this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders.

(b) All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group.

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